Supreme Court, U.S.
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(1)

No. 00-580

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2000

Members of the Florida First Coast Chapter
National Business League,
Petitioner,

v.

City of Jacksonville, Florida
Respondent.

Petition For a Writ Of Certiorari
To The Supreme Court of Florida

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

(1) Whether, it was the intent of Congress in the establishing of Federal Rule Civil Procedure 23.2 to permit members of an unincorporated association the opportunity to represent themselves as a class, by naming certain members as representative parties in an action brought by or against the members of an unincorporated association in a proceeding for a judicial review, facilitating the necessity to require a lawyer's representation, when members of the said unincorporated association do not have means or funds to employ a lawyer in their interest.

(2). Whether Petitioner members of the Florida First Coast Chapter, National Business League, on February 4, 1999, filed "One (1) Claim" as intended under Federal Rules of Civil Procedure 23.2 or whether the District Court's order filed the 21st Day of May 1999, misconstrues the intent of the business association when the District Court's order states: "The plaintiffs cannot meet the requirements of fed. R. Civ. P. 23 because there are varying issues of fact and law amongst the claims of the NBL members."

The Florida First Coast Chapter, National Business League contends that only one claim was filed in Case No. 99-98-Civ. J-20-B.

(3) Whether the Respondent City of Jacksonville, Florida's governing body, the City Council, can legally waive the provisions of chapter 126 of the city's purchasing code by adopting

ordinances which circumvent parts 2,3,4,7 and 8 of said code, that cover equal business opportunities for minority businesses. The parts waived directly ensure the exclusion of and prohibits violation of Title VI Public Law 88-352, 14th Amendment of U.S. Constitution and Section 3 of The Small Business Act.

(4) Whether Ernest McDuffie, III, a member and Vice President, of the Florida First Coast Chapter National Business League can participate as a claimant and party to the "Class" in said case filed on February 4, 1999, by petitioner members of The Florida First Coast Chapter National Business League vs Respondent City of Jacksonville Florida Case, No. 99-11799-E.

(5) Whether respondent actions in Case No. 99-11799-E was a practice of malicious harassment to deny petitioner their rights to procure and fulfill contracts let by The City of Jacksonville, Florida.

(6) Whether the petitioner members of the Florida First Coast Chapter, National Business League, constituted an un-incorporated business association at the time Case No. 99-117-99-E was filed.

(7.) Whether the petitioner members of the Florida First Coast Chapter, National Business League, are entitled to punitive damages in this 14th amendment of the U.S. Constitution Class Action suit case No. 99-98-Civ-J-20B.

(8.) Whether the Respondent City of Jacksonville Florida has denied Black African-

American businesses the opportunity for training young Black African-American future Artisan today to be producers tomorrow.

(9.) Whether Respondent City of Jacksonville, Florida can conduct more than 10 depositions according to the court case management and scheduling order that was filed by the court on April 7, 1999.

(10.) Whether petitioner members of the Florida First Coast Chapter, National Business League, Case No. 99-11799-E vs Respondent City of Jacksonville, Florida, filed on February 4, 1999, and signed by 88 members is the same case filed by Ernest McDuffie, III, individually, and doing business as D&M Contracting Company, petitioner pro se, vs Respondent City of Jacksonville, Florida case No. 99-660 filed on January 6, 1997.

(11.) Whether respondent is the recipient of Federal Financial Assistance.

(12.) Whether respondent discriminated against petitioner in the administration of construction and professional contracts based on their race and/or color.

(13.) Whether petitioner have standing to bring action against respondent under Public law 88-352 Title VI of the Civil Rights Act of 1964, as amended.

(14.) Whether or not respondent had an disproportionate effect on a group protected by the provision of Title VI of the Civil Rights Act of 1964, as amended.

(15.) Whether petitioner made a prima facie case under Title VI.

(16.) Whether the respondent provided a substantial legitimate justification for its practice under Title VI.

(17.) Whether the court denied petitioners their rights to discovery under the law.

(18.) Whether the Court denied petitioner their rights to due process of law under the 14th amendment of the U.S. Constitution.

LIST OF PARTIES

The Parties to the proceedings in the court below; Petitioner, members of The Florida First Coast Chapter National Business League located in Jacksonville Florida, and is not a subsidiary of any other corporation

The Respondent is the City of Jacksonville, Florida.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, members of The Florida First Coast Chapter National Business League respectfully request that a Writ of Certiorari is issued to review this order by The United States Court of Appeals for The Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of The United States Court of Appeals for the Eleventh Circuit is reprinted in the Appendix commencing at Page 1a.

JURISDICTION

The order of The United States Court of Appeals for the Eleventh Circuit ("Court of Appeals") was entered on April 4, 2000. The Court of Appeals denied a timely petition for rehearing on July 17, 2000.

Jurisdiction of this Court exists under, Public Law 88-352, Title VI of the 1964, as amended and 28 U.S.C. 1254.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED

Amendment XIV

The Fourteenth Amendment to the United States Constitution provides in relevant part: Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law' nor deny to any person within its jurisdiction the equal protection of the laws.

Section 601

Public Law 88 - 352 Title of the Civil Rights Act of 1964, as amended, in relevant part: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits, of or be subjected to discrimination under any program or activity receiving Federal assistance."

42 U.S.C. 2000d-4a

42 U.S.C. 2000d-4a, provides in relevant part: "that a program or activity" (or just a program") includes "all the operations of" any one of a number of entities, subject only to the proviso that at least one (or, as the statute provides, "any") "part of" that entity's operation "is extended Federal financial assistance."

Executive Order 12250 1-201(a)(d)1-201
Coordination of Non-discrimination Provisions, provides in relevant part" The Attorney General shall coordinate the implementation and enforcement by executive agencies of various nondiscrimination provisions of the following laws: (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); Any other provision of Federal statutory law which provides in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal assistance.

13 CFR Part 112.2(b)
Code of Federal Regulation 13 CFR Part 112.2 (b) provides in relevant part: "The term Federal financial assistance includes: (1) grants and loans of Federal funds: (2) the grant or donation of Federal property and interest in property; (3) the detail of Federal personnel: (4) the sale and lease of, and the permission to use on other than a casual or transient basis, Federal property or any interest in such property without consideration or at a nominal consideration which reduced for the purpose or assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and (5) any Federal agreement, arrangement, or other contract which has as one of its purpose the provision of assistance.

13 CFR Part 112.2(d)

Code of Federal Regulation 13 Part 112.2(d), provides in relevant part: "The terms applicant and recipient mean, respectively, one who applies of and one who receives any of the financial assistance under any of the statutes referred to in paragraph (a) of this section, the term recipient also shall be deemed to include sub-recipients of SBA financial assistance, i,e., concerns which secondarily receive financial assistance form the primary recipients of such financial assistance."

15 CFI Part 8.4(1)(b)(v))Vii)

Code of Federal Regulation 15 CFR Part 8.4(1)(b) (v)(vii) provides in relevant part: A recipient of Federal financial assistance, or other party subject to this part under any program to which this part applies, shall not, participate directly or through contractual or other arrangements, in any act of curse of conduct which, on the ground of race, color, or national origin: (v) Treats a person differently from others in determining whether he satisfies any admission enrollment, quota, eligibility, membership, or other requirement, or condition which persons that meet in order to be provided any service, financial aid, or other benefit provided under the program. (Vii) Denies a person same opportunity or consideration given others to be selected as a contractor, subcontractor, or subgrantee when a program is applicable hereto.

24 CFR Part 1.4(2)(1)

Code of Federal Regulation, 24 CFR Part 1.4(2)(1),

provides in relevant part: "A recipient, in determining the types of ... services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such ... services, financial aid, or other benefits will be provided under any such program or activity, or the class of person to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or method of administration which have the effects of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin."

24 CFR Part 570-601

Code of Federal regulation, 24 CFR Part 570-601(a), provides in relevant part: "A recipient may not, treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or to other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity."

24 CFR Part 570.602(v)

Code of Federal regulation 24 CFR Part 570.602(v), provides in relevant part: "A recipient may not, treat an individual differently from others in determining whether the individual satisfies any admissions,

enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity."

29 CFR Part 31.3(2)

Code of Federal "Regulation 29 CFR Part 31.3(2) provides in relevant part: "A recipient, in determining the types of service, financial aid, or other benefits, or facilities which will be provided under such program, or the class of individuals to whom, or the situation in which, such services, financial aid, other benefits, or facilities will be provided under any such program or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangement, utilize criteria or methods of administration which have the effect of subjection individuals to discrimination because or race, color or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

34 CFR Part 100.3(b)

Code of Federal Regulation 34 CFR Part 100.3(b), provides in relevant part: "Specific discriminatory actions prohibited. (1)A recipient under any program to which this part applies may not directly or through contractual or other arrangements, on grounds of race, color, or national origin."

34 CFR Part 106.2(h)

Code of Federal Regulation, 34 CFR Part 106.2(h), provides in relevant part: "Recipient means any State or political sub-division thereof, or any instrumentality of a State of political sub-division thereof, any public or private agency, institution, or organization or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receive or benefits from such assistance, including any submit, successor, assignee, or transferee thereof."

49 CFR Part 21.5(v)

Code of Federal Regulation, 49 CFR Part 21.5(v) provides in relevant part: A recipient may not, "treat a person differently from others in enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity."

49 CFR Part 23.5(I)

Code of Federal Regulation, 49 CFR Part 23.5(i), provides in relevant part: "Minority means a person who is a citizen or lawful permanent resident of the United States and who is: (a) Black(a person having origins in any of the black racial groups of Africa ...); (f) Members of other groups, or individuals, found to be economically, and socially disadvantaged by the Small Business' Act, as amended (15 U.S.63(a)."

Ordinance Chapter 126, Parts 2,3,4,7,8, and Part 401

City Ordinance Chapter 126, Parts 2,3,4,7,8 and Part

401 provides in relevant part: 126.401 Policy of city. It is hereby declared to be the policy of the city to assure equal opportunities to every person, regardless of race, religion, sex, color, age, handicap, or national origin, in securing or holding employment in a field of work of labor or which the persons qualified. It is also the policy for the city that persons comply with this policy and will not expend public funds in a manner as will encourage, perpetuate or foster discrimination.

City Ordinance Chapter 126. Part 404(a)
City of Jacksonville, Florida Ordinance Chapter 126, Part 404(a), provides in relevant part: City of Jacksonville, Florida Ordinance Chapter 126. Part 404(a), provides in relevant Part: Nondiscrimination provisions in all city contracts. All city contracts shall contain the following provisions: (a) The contractor represents that he has adopted and will maintain a policy of nondiscrimination as defined by ordinance throughout the term of this contract.

City Ordinance Chapter 126 Part 801 City Ordinance Chapter 126.801, Federal Affirmative Action Compliance 126.801 intent. It is the intent of the Council that to the extent that federal affirmative action compliance is required to be implemented by the city in conjunction with the bidding ad awarding of city contracts that the city shall assure such compliance. This compliance shall include but not be limited to the provisions of Presidential Executive Order 11246 and those federal laws and regulations set forth in s. 400.103, Ordinance Code. "History - Ord. 92-1001-667,s.1."

126.802 Enforcement. It shall be the responsibility and duty of the mayor to carry out the intent of the Council as expressed in s. 126.801 herein. History - Ord. 92-1001- 667,s.1.

Rule 23. Class Actions

(a) PREREQUISITES TO A CLASS ACTION. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable , (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

"Rule 23.2 Actions relating to Unincorporated Associations an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e). As added (Feb. 28, 1966, eff. July 1, 1966)

STATEMENT OF THE CASE

This discrimination Class Action is brought pursuant to Public law 88-352, Title VI of the Civil Rights Act of 1964 as Amended; Code of Federal Regulations. (CFR) 41 Parts' 50-61; (CFR) 13 Parts' 101-318; (CFR) 24 Parts' 0-146; (CFR) 24 Parts 500-600; (CFR) 49 Parts' 1-99; (CFR) 48 Parts' 52-99; (CFR) 15 Parts' 8-299; (CFR) Parts' 0-99; (CFR) 34 Parts' 1-299; City of Jacksonville Chapter 126 purchasing code, and the 14th Amendment of The U.S. Constitution.

The acts complained of in this suit are:

A. Intentionally treating Petitioner differently in the administration of Construction and Professional contracts;

B. Careless, reckless or negligent acts or omissions by Respondent employees, officers or agents in the biding and awarding of City contracts;

C. Intentional, systematic and recurring waiving of Chapter 126 of the City's Purchasing Code by Respondent employees, officers or agents.

The petitioner members of the Florida First Coast Chapter National Business League pursuant to Rule 23.2 on 2/4/99 filed complaint with jury demand.

On (5/21/99) case was closed; dismissed without prejudice in favor of Respondent.

On (6/1/99) the Petitioner filed a petition to amend order. On (6/11/99) the petitioner filed a notice of appeal.

On April 4, 2000, the United States Court of Appeals for the Eleventh Circuit Order to dismiss.

On April 13, 2000, Petitioner filed a timely petition for rehearing the petition for rehearing was denied on July 17, 2000.

Background

Petitioner filed this action pursuant to Public Law 88-352, Title VI of the Civil Rights Act of 1964, as amended and the codes of Federal Regulations, with Exhibit.

Title VI - Nondiscrimination in Federally assisted programs, Sec. 601. States no person in the United States shall, on the ground of race, color or national origin, be exclude from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance.

As cited in the Grove City v. Terrel H, Bell, 465 US 55.79 L. Ed. 2d 516 No, 82-792, argued Nov. 29 1983; decided Feb. 28, 1984, a "recipient" is defined in 34 CFR, 106.2(h) 1983 to include:

"[Any] public or private agency, institution or organization or other entity or any person to whom federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance ..."

It Further states:

The Title IX was patterned after Title VI of the Civil Rights Act of 1964...Except for the substitution "sex" in "Title IX to replace the words, "race, color, or national origin in Title VI, and for the limitation of Title IX to "education" programs or activities, the two statutes use identical language to describe their scope."

The case Association of Mexican American Educators v. The State of California Commission on Teacher Credentialing No. C-92-3874 WHO. U.S. District Court. N.D. California, Aug. 25, 1993, states Plaintiffs under Title VI of Civil Rights Act, which prohibits use of federal funds to subsidize racial discrimination, may maintain private right of action based on administrative regulations promulgated pursuant to Title VI; Supreme Court has held that those regulations are valid and that they further congressional purpose of withholding federal funds from discriminatory practices. Civil Rights Act of 1964, 601, as amended, 42 UCA 2000d.

Petitioner filed this action pursuant to the 14th Amendment of the US Constitution.

As stated under the equal protection provision of the 14th Amendment to the U.S. Constitution "nor shall any state deprive any person of Life, Liberty, or Property without due process of Law." The Respondent governing body waived the provisions of Chapter 126 of the City's purchasing code by adopting ordinances that circumvent Parts 2,3,4,7 and 8 of said code.

The Respondent admitted to waiving certain provisions of Chapter 126 of the Purchasing Code. This practice deprived the Petitioners, their opportunity to participate in the contracting process.

Black African-American businesses in Jacksonville, Florida are denied participation in public contracting opportunities, they are deprived of Liberty that's provided under the 14th Amendment of the Constitution.

The freedom and privilege to enjoy all the rights granted by the United States and a particular state's constitution, as well as other rights such as right to earn a living, acquire knowledge, and marry, refers to the fullest scope of freedom one has, but at the same time limits those freedoms so as not to interfere with another persons exercise of them. "The Due Process Clause requires that termination of a property right to continued employment must be preceded by notice and an opportunity for a hearing on the matter." Adams v. Sewell, No. 90-3645, United States Court of Appeals, Eleventh Circuit. Nov. 4, 1991.

Pursuant to 42.2(2), when government erects a barrier that makes it more difficult for members of one group to obtain benefit than it is for members of another group, member of former group seeking to challenge barrier need not allege that they would have obtained the benefit but for the barrier need not allege that they would have obtained the benefit but for the barrier in order to establish standing. Further, the denial of equal treatment resulting from imposition of the barrier, not ultimate inability to obtain the benefit gives standing for equal protection under the 14th Amendment of the United States Constitution.

Associated General Contractors of America v. City of Jacksonville, Florida, No. 91-1721, June 14, 1993. By waiving the provisions of Chapter 126 of the City's Purchasing Code, the government erected a barrier that blocked the Petitioners an African-American business owners.

In the order dated April 4, 2000, the court did not state that the Petitioner did not make a prima facie case under Title VI, Federal Regulations. As stated in Ga. St. NAACP v. State Georgia No. 84-8771. United States Court of Appeals Eleventh Circuit Oct. 29, 1985, "plaintiff, who asserts disparate impact claim under Title VI of Civil Rights Act of 1964 601 et seq. 42. U.S.C.A. 2000d et seq. must show by preponderance of evidence that facially neutral practice has racially disproportionate effect, where upon burden shift to defendant to prove substantial legitimate justification for its practice; plaintiff then may ultimately prevail by preferring equally effective alternative practice which results in less racial disproportionately or proof that legitimate practices are pretext for discrimination." Further, to establish prima facie case of disparate impact based on race, plaintiffs must show that defendants' racially neutral practice detrimentally affects persons of particular race to greater extent than other races. Civil Rights Act of 1964 601 et seq., 42 U.S.C.A. 2000d et seq.

In this action, the Respondent did not provide a substantial legitimate justification for its practice of violations under Title VI and Federal regulations.

According to Brown vs. Crawford, No. 89-5927 USCA, 11th Cir (1990) 2544, while a pro se litigant does not escape essential burden under summary judgment standards of establishing that is genuine issue as to a fact material to their case in order to avert summary judgment, court of appeals must view factual inferences favorably toward party not moving for summary judgment and pro se complaints are entitled to liberal interpretation by the court.

Documents and evidentiary evidence to support the petitioner constitutional standing were in the court's record were overlooked or ignored at the time of the April 4, 2000 ruling. Crawford v. Lamantia No. 93-2241 USCA, 1st Cir. 1994.

A barrier (waived Purchasing Code) erected by City of Jacksonville Florida government makes it more difficult for Petitioner's a Black African-American group members to obtain benefit than it is for members of another group.

Additionally, rights protected by the United States Constitution of Equal Protection and due Process was violated by the City government with the waiving of Chapter 126 of Purchasing Code.

The Respondent, City of Jacksonville is a recipient of federal financial assistance funds in this action. Pursuant to Moreno v. Consolidated Rail Corporation, nos., 94-1231, 94-1247 United States Court of Appeals Sixth "Circuit, ov., 1996, "by accepting federal funds for its railroad crossing improvements, railroad was a 'recipient of federal

assistance' within the meaning of the Rehabilitation Act, even though Federal funds came to the railroad through state of Michigan rather than ... by United States directly, and members of issue; railroad owned and operated railroad crossing improvements and federal government paid for obligation that railroad would otherwise have had to pay out of their own funds, subject in some case to equal sharing of costs with local public authorities."

Monell v. Department of Social Services of the City of New York, et al. 436 US 658, 56 L. Ed 2d 611, 98 5 ct 2018 [no. 75-1914], June 6, 1978, held that "local governments, municipal corporations, and school boards are persons subject to liability under 42 USCS 1983 for violating another persons federally protected rights, and thus are not wholly immune from suit under the statue covering legal as well as natural persons." Civil Rights - 12.5 - Liability for violations - Local governing bodies, as person's subject to liability under 42 USCS - 1993 for violating another person's Federally protected rights, local governing bodies can be sued directly under 1983 for monetary, declaratory of injunctive relief where the action that is alleged to be unconstitutional implement or executes a policy statement, ordinance, regulation or decision officially adopted and promulgated by the body's officers."

Further, the court up held extra effort in awarding contracts to businesses traditionally left out of the bid and award process. The Court stated: "they were required, to the greatest extent feasible, to contract with Ramirez, this is strong language. It

does not give the city officials the broad discretion that the trial court concluded. We think that greatest extent means what it says the maximum and that they were therefore obliged to take every affirmative action that they could properly to make the award to Ramirez. Interesting enough, the Respondent did just the opposite, waived the provisions of the Purchasing Code, thereby eliminating those protected under Title VI of Civil Rights Act which prohibits use of Federal funds to subsidize discrimination, may maintain private right of action, base on administrative regulation promulgated pursuant to Title VI; Supreme Court has held that those regulations are valid and that they further congressional purpose of withholding Federal funds for discriminatory practices.

In the case of John Concordia, v. J. Thomas Benedovic, No. 81-5777. USCA, 11th Circuit Dec. 16, 1982, cited:

"In order to apply doctrine of Res Judicata in context of either motion to dismiss or motion or summary judgment, that defense of Res Judicata appear from face of complaint, Federal Rules Civ. Proc. Rules. 12(b)(6), 56, 28 U.S.C.A; 42 U.S.C.A. 1983, 1985."

Respondent has failed to comply with Rules 56(f) of Federal Rules of Civil procedure, which allows a summary judgment to be denied or the hearing on the motion to continue if the non-moving party has not had an opportunity to make full discovery.

Pursuant to Rule 56(g) Respondent motion made in bad faith.

That there is no genuine issue of material facts.

In this instant action that the Respondent ("City") failed to comply with public law 88-352 Title VI of the Civil Rights Act of 1964, as amended; the 14th Amendment to the U.S. Constitution, the Small Business Act and the Small Business Investment Act of 1958 as amended; Code of Federal regulation (CFR) 34 Parts 1 through 299; 41 (CFR) Parts 50 through 61; 13 (CFR) Parts 101 through 318; 24 (CFR) Parts 0 through 146; 24 (CFR) Parts 500 through 0600; 49 (CFR) Parts 1 through 99; 48(CFR) Parts 1 through 51; 48 (CFR) Parts 52 through 99; 15 (CFR) Parts 8 through 299; 29 (CFR) Parts 0 through 99; and Chapter 126 of the purchasing code of the City of Jacksonville, Florida.

At the time of filing this class action lawsuit on February 4, 1999, the Florida First Coast Chapter, National Business League was an unincorporated business association. According to the Federal Rules of Civil Procedure Rule 23.2, National Business League was an unincorporated business association. According to The Federal Rules of Civil Procedure Rule 23.2, which reads:

"Rule 23.2 Actions Relating to unincorporated Associations An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may

make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e). As added (Feb. 28, 1966, eff. July 1, 1966).
See Sierra Club v. Morton, 405 US 727 (1972) (environmental). "It is clear that an organization whose members are injured may represent those members in a proceeding for a judicial review." Id 739.

An association is defined:
Association. The act of a number of persons in uniting together for some special purpose or business. It is a term of vague meaning used to indicate a collection or organization of persons who have joined together for a certain or common object. Also, the persons so joining, the state of being associated.

An unincorporated society; a body of persons united and acting together without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise. Penrod Drilling Co. V. Johnson, C.A. Tex., 414 F, 2d 1217, 1222. It is not a legal entity separate from the person who compose it. See also Affiliation.

An organization treated as a corporation for Federal tax purposes even though it may not qualify as such under applicable state law. What is designated as a trust or a partnership, for example, may be classified as an association if it clearly possesses corporate attributes. Corporate attributes include: centralized management,

continuity of existence, free transferability of interests, and limited liability. I.R.C. § 7701(a)(3).

A "business trust" is an "association" when it has a continuing entity throughout trust period, centralized management, continuity of trust uninterrupted by death among beneficial owner, means for transfer of beneficial owners, means for transfer of beneficial interests, and limitation of personal liabilities of participants to property embarked in undertaking Fletcher v. Clark, D.C. Wyo. 57 F. Supt. 479, 480. To prove "association:" with a criminal venture, for purpose of convicting upon evidence that defendant aided and abetted illegal enterprise, there must be evidence to establish defendant shared in principal's criminal intent. U.S. v. Cowart, C.A. Ga, 595 F. 2d 1023, 1035.
See Fletcher et al v. CLARK, No 2916, District Court, D Wyoming Sept 8, 1944
Also See: PENROD DRILLING COMPANY v. Sam H. JOHNSON and James L. Starnes, No 24662 USCA, Fifth Circuit Aug. 1969.

The National Business League Inc., was founded in 1900 by Dr. Booker T., Washington and a group of 400 delegates from across the country, in Boston, Massachusetts. Among the 400 delegates in attendance in Boston were seven persons from Jacksonville, including Eartha M M. White. These seven pioneers organized the local chapter of the National Business League in Jacksonville, also in 1900.

The goals of The National Business League from its inception have been: To eliminate the exclusion of Blacks from the fabric of America's free

enterprise system; To be a constructive vanguard in seeking new initiatives that help eliminate the isolation of the Black business community form the nation's aggregate business community; to build a strong economic infrastructure in the Black business community;and to encourage Black business development and growth. Also See petitioner's Exhibit #41 Tabs 1 through 46 with certified affidavits for A. B. Coleman, Addris Vinson, Alfred J. Bryant, Alvin Mitchell, Andre W. McBride, and C. D. Kinsey.

REASONS FOR GRANTING THE PETITION

I. THE COURT OF APPEALS' DECISION CONFLICTS WITH THE U. S. SUPREME COURTS OPINION IN NORTHEASTERN FLORIDA CHAPTER OF THE ASSOCIATED GENERAL CONTRACTOR OF AMERICA v. CITY OF JACKSONVILLE FLORIDA NO. 91-1721.

The Supreme Court in Northeastern Florida Chapter of the Associated General Contractors of America v. City of Jacksonville Florida maintained that when government erect a barrier that makes it more difficult for members of one group to obtain benefit than it is for members of another group, member of former group seeking to challenge barrier need not allege that they would have obtained the benefit but for the barrier in order to establish standing . Further, the denial of equal treatment resulting from imposition of the barrier, not ultimate inability to obtain the benefit gives standing for equal protection under the 14th Amendment of the United States Constitution. By waiving the provisions of Chapter 126 of the City's Purchasing Code, the government erected a barrier that blocked the Petitioner's African-American business owners.

A barrier (waived Purchasing Code) erected by City of Jacksonville Florida government makes it more difficult for petitioner's Black African-American group member's to obtain benefit

than it is for members of another group. "Additionally, Rights protected by the United States Constitution of Equal Protection and Due Process was violated by the City government without the waiving of Chapter 126 or Purchasing Code."

II. THE COURT OF APPEAL'S DECISION BRINGS INTO QUESTION A RECIPIENTS' UTILIZATION CRITERIA OR METHODS OF ADMINISTRATION THAT HAVE THE EFFECT OF SUBJECTING PERSONS TO DISCRIMINATION.

The Respondent intentionally treated the petitioner's different in the administration of the construction and professional contracts thereby violating their civil rights, that are protected under Title VI of the Civil Rights Act, of 1964 as amended, Public Law 88-352, 29 CFR part 31.3(2), 15 CFR part 8.4(1)(b)(v)(vii), 24 CFR Part 570.602(v), 24 CFR Part 1.4, 13 CFR part 112.2b,d and 34 CFR part 106.2(b), and 49 CFR part 23.5(i).

The Supreme Court, in Grove City College v. Bell, held that Title VI's non-discrimination provision only covered the particular program receiving Federal funds, the Civil Rights Restoration Act of 1987 went further to include the entire organization of a Federal funds recipient.

"Recipient means any State or political subdivision thereof, or any instrumentality of a State

thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or to the entity, or any said person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receive or benefits from such assistance, including any successor, assignee, or transferee thereof."

U.S. Code, 42 U. S. 2000d-4a, provides that a "program or activity (or just a program') includes all the operations of "any one of a number of entities, subject to the proviso that at least or (or, as the statue provides, "any") "part of" that entity's operation is extended Federal financial assistance." The same principle applies in this case, so long as any part of that Respondent "operations" receive federal financial assistance," "all" of that city operation" are programs or activities" and are subject to "Title VI.

Title VI case "Hodges by Hodges v. Public Building Commission of Chicago," No. 93 4329, U S "District Court, N.D. Illinois, Eastern Division, Sept. 14, 1994, where a similar defense of not receiving federal assistance was given, the Court stated:

"All of the parties place far too much importance on whether or not the defendants actually receive federal funding. In the post CRA era, whether or not an entity receives federal funds is no longer the sine qua non of a Title VI action. Consistent with the broad definition of "program or activity" courts have rejected such a formalistic

approach tin favor of examining the defendant's relationship to the entity receiving the federal funds."

In the case Association of Mexican American Educators v. The State of California Commission on Teachers Credentialing,. No. C-92-3874 WHO, U.S. District Court, N.D. California, Aug. 25, 1993 the Court states: "Plaintiffs under Title VI of Civil Rights Act, which prohibits use of federal funds to subsidize racial discrimination, may maintain private right of action based on administrative regulations promulgated pursuant to Title VI; Supreme Court has held that those regulations are valid and that they further congressional propose of withholding federal funds form discriminatory practices."

III. THE COURT OF APPEAL'S DECISION BRINGS INTO QUESTION HOW ADVERSE OF IMPACT DOES AGREEMENTS, ARRANGEMENT OR OTHER SPECIAL CONTRACTS, HAVE ON A GROUP PROTECTED BY TITLE VI.

The court stated "Elston vs. Talladega County Board of Education 997 F. 2d 1394, 1406 (11th Cir. 1993), "when regulation are promulgated pursuant to Title VI, they "may validly proscribe. Actions having a disparate impact on groups protected by the Statue, even if these action are not intentionally discriminatory." (Citation omitted). The court ruled in McDuffie v. First Union Bank the Regulations Cited by the Plaintiff appear to proscribe action

"having a disparate impact "on groups protected by the statue" se 15 CFR part 8, subpart a, sec 8.4 (b)(2)-(3) and compare with Elston, 999 F. 2d at 1407 N. 12 Quoting relevant department of education Title VI Regulation. For purpose of disparate impact standard." (McDuffie v. First Union - No. 97-1533).

As stated in Elston "to establish liability under the Title VI regulation disparate impact scheme a plaintiff must - demonstrate by a preponderance of the evidence that a facially neutral practice has a disproportionate adverse effect on a group protected by Title VI." 97 F. 2d at 1407.
Also see McDuffie v. City of Jacksonville Florida, USSC, Oct. 1999 No. 99-660; USSC, October, 1999-No. 99-1007; Supreme Court of Florida No. SC00-743-August 14, 2000.

IV. The Appeals Court Decision conflicts with the Federal Rules of Civil Procedure Rule 23.2 actions relating to unincorporated associations.
In the instant case, the court affirmed the lower court's order denying class certification to the petitioners and dismissing the case. (See page two of this court's PER CURIAM OPINION). The court's holding in that regard overlooked or misapprehended the nature of the proceeding below, and the issues before the court. Accordingly, this Petition a writ involves the legitimacy of the District Court's denial of Class Certification to petitioners when "Class Certification" was not even an issue before the court.

The record reveals that the court held a status conference to determine how to proceed in the case,

and whether petitioner's as members of an unincorporated association could proceed without benefit of counsel (R:1-6). The court specifically stated that it was only concerned about whether members of an unincorporated association could proceed without counsel pursuant to Fed. Rule of Civ. P. 23.2. (R:18). That rule deals solely with the issue of whether members of an unincorporated association may elect certain of its members to represent the association in a class action. It has very little if anything to do with certifying a class pursuant to Fed. R. Civ. P. 23(a). However, while acknowledging that the court was proceeding pursuant to Fed. R. Civ. P. 23.2, the District Court entered its order based on criteria required by Fed. Rule. Civ. P 23(a).

The petitioner's were never notified, nor did they have the opportunity to present evidence the merits of class certification under Fed. R. Civ. P. 23(a). Generally, prior to ruling on class certification issues, the trial court conducts an evidentiary hearing. No such hearing was held in the instant case. Instead, petitioners were misled as to the nature of the proceeding, and therefore denied the opportunity to present evidence in support of class certification.

Petitioners are aware that this court is limited to reviewing the record to determine whether the trial court abused its discretion See Andrews v. American Telephone and Telegraph Company 1966. C11 426. In that regard, appellants posit that the court abused its discretion by leading appellants to believe that it was proceeding under one Rule of Procedure, and

then ruling on another. This is especially true since the "class certification" was not an issue at the status conference below.

Additionally, prior to ruling on class certification, or representative capacity of putative class representatives, it is incumbent upon the court to address the issue of standing. Griffin v. Duggers, 883 F. 2d 1482 (11th Cir. 1987). In the case at hand, the District Court failed to address the standing issue. Therefore, it failure to address that issue, precludes it from reaching the issues regarding class certification or the representatives capacity of putative class representatives.

Accordingly, for the reasons stated herein, petitioner's contend that the court must vacate that portion of its holding affirming the lower courts denial of class certification in the above styled cause.

CONCLUSION

For the foregoing reasons, the petition for Writ of Certiorari should be granted.

The Court of Appeals deprived the petitioners of due process.

Respectfully Submitted
William Roberts, Jr., Esquire
Counsel For Petitioners
816 Broad Street
Jacksonville, Florida 32202
(904) 356-6521
Florida Bar No.: 243507

By the Representative parties for the Florida First Coast Chapter of the National Business League Association. Pursuant to Rule 23.2 of the Federal Rules of Civil Procedure.

Isiah J. Williams, III, President
Ernest McDuffie, III, vice-president
George Carter, Secretary
Lewis M. Palmer, Jr., Treasurer

APPENDIX

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

No. 99-11799 APRIL 04 2000

Non-Argument Calendar THOMAS K. KAHN
CLERK

D.C Docket No. 99-00098-CIV-J-20B

MEMBERS OF THE FLORIDA FIRST COAST CHAPTER, NATIONAL BUSINESS LEAGUE,
Plaintiff-Appellant,

Vesus

CITY OF JACKSONVILLE, FLORIDA,

Defendant-Appellee,

Appeal from the United States District Court
for the Middle District of Florida

(April 4, 2000)

Before ANDERSON, Chief Judge, EDMONDSON and HULL, Circuit Judges.

PER CURIAM:

The Members of the Florida First Chapter National Business League appeal the dismissal without prejudice of their suit against the City of Jacksonville. The district court found that the Appellants needed counsel in order to proceed and

denied class certification because the appellants asserted claims involving varying issues of fact and law. Because we find that the district court did not err in dismissing the case, we affirm.

We review the dismissal of an action without prejudice under Fed. R. Civ. Proc. 41(b) for abuse of discretion. See Gratton v. Great American Communications. 178 F. 3d 1373, 1374(11th Cir. 1999).

As an initial matter, we address the Appelles' claim that we lack jurisdiction to hear this claim. The Appellees maintain that the denial of class certification is not a final judgment that can be appealed. It is true that a denial of class certification is not an immediately appealable order. See Coopers & Lybrand v. Livesay, 437 U.S. 463, 467-69, 98 S. Ct. 2454, 2457-58(1978). However, the court below also dismissed the action and such a dismissal is appealable. See Grilli v. Metropolitan Life Ins. Co., 78 F. 3d 1533, 1538 (11th Cir. 1996). The Appelants raise a number of issues that pertain to the merits of the underlying action . Because the district court did not decide this case upon the merits, we do not have jurisdiction to review those claims.

The Appellants appeal the district court's determination that they needed counsel in order to proceed with their action. Under the law of this circuit, an unincorporated association, such as the Appellant association, needs counsel in order to proceed. See Palazzo v. Gulf Oil Corp., 764 F. 2d 1381, 1385(11th Cir. 1985). In Palazzo, this Court

held that both incorporated and unincorporated associations could not proceed in lawsuits without counsel even when the corporation assigned its claims to the representative. See id. Because the class representative seeks to represent the association, they fall under the rule in Palazzo and thus the association must obtain counsel in order to proceed.

Therefore we cannot find that the district court abused its discretion when it dismissed the Appellants' suit. We reiterate the district court's advice that the members of the Appellant organization are free to refile as individuals and proceed pro se as individuals.
The order to dismiss is hereby
AFFIRMED.

William Roberts Jr.
William Roberts, Jr., P.A.
816 Broad Street
Jacksonville, FL 32202

April 04, 2000

RE:99-11799-EE Members of the Florida v. City of Jacksonville
DC DKT NO.: 99-00098 CIV-J-20B

CC: William Roberts Jr.
CC: Loree Lea French
CC: Richard A. Mullaney
CC: Hon. Harvey E. Schlesinger
CC: Administrative File

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JUL 17, 2000
THOMAS K. KAHN
CLERK

No. 99-11799-EE

MEMBERS OF THE FLORIDA FIRST COAST CHAPTER, NATIONAL BUSINESS LEAGUE,
Plaintiff-Appellant,

versus

CITY OF JACKSONVILLE, FLORIDA,
Defendant-Appellee.

On Appeal from the United States District Court for the Middle District of Florida

BEFORE: ANDERSON,Chief Judge,EDMONDSON and HULL,Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by Appellants is DENIED.

ENTERED FOR THE COURT:

/S/ R. LANIER ANDERSON, III
CHIEF JUDGE

ORD-41

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K Kahn
Clerk

In Replying Give Number
Of Case And Names of Parties

July 17, 2000

William Roberts, Jr.
William Roberts, Jr., P.A.
816 Broad Street
Jacksonville, FL 32202

RE: 99-11799-EE Members of the Florida v. City of Jacksonville
DC DKT NO.: 99-00098 CIV-J-20B

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

THOMAS K. KAHN, Clerk
Reply To:Brenda Wiegmann (404)335-6174

Encl.

REHG-1(1-1999)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FILED
99 MAY 21 PM 2:24
ELEVENTH CIRCUIT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

MEMBERS OF THE FLORIDA FIRST COAST CHAPTER NATIONAL BUSINESS LEAGUE, Plaintiffs,

v.

Case No. 99-98-Civ-J-20B

CITY OF JACKSONVILLE, FLORIDA
Defendant.

ORDER

Before the Court is the Defendant's Motion to Dismiss (Doc. No. 4, filed February 24, 1999). The Plaintiffs oppose the motion. See Doc. No. 5, filed March 16, 1999. The Court held a hearing on Thursday, May 20, 1999, to address the procedural issue of whether the Plaintiffs could proceed without representation by a licensed attorney. The Defendant argues that the Plaintiffs must be represented by counsel because the Plaintiffs are actually, an entity incorporated as the Florida First Coast National Business League ("NBL"). See Palazzo v. Gulf Oil

Corp., 764 F. 2d 1381, 1385 (11th Cir. 1985); cert. denied, 474 U.S. 1068 (1986) (stating that a corporation is an artificial entity that must be represented by counsel). The Plaintiffs claim that they are not a corporation, but rather members of an association wishing to seek recourse for common injuries as a result of the Defendants action. The Plaintiffs assert that they should be able to represent themselves as a "class" pursuant to Fed. R. Civ. P. 23. The Court finds that the members of the NBL simply cannot be represented by a non-lawyer, whether NBL is incorporated or not does not matter. The Plaintiffs cannot meet the requirements of Fed. R. Civ. P. 23 because there are apparent varying issues of fact and law amongst the claims of the NBL members. Thus, regardless of whether NBL is a corporation, the Court finds that the Plaintiffs simply cannot proceed further without counsel. Hence, the plaintiffs case must be dismissed because logistically this case cannot proceed. The Plaintiffs should note that the Court's dismissal is based on procedural matters and not on the merits of their claims.

Accordingly, the Defendants Motion to Dismiss (Doc. No. 4) is GRANTED and this case is hereby DISMISSED WITHOUT PREJUDICE.

The Plaintiffs may refile a new case when they have proper representation, or each NBL member may attempt to file an individual case in which they each represent themselves.

The Clerk is directed to close the file.

DONE AND ENTERED at Jacksonville, Florida, this 21st day of May, 1999.

HARVEY E.SCHLESINGER
United States District Judge

Copies to:

Members of the Florida First Coast Chapter,
National Business League, c/o Ernest McDuffie, III
Lore L. French, Esq.
Garry Randolph, Courtroom Deputy
Law Clerk

U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS AND CORPORATION DISCLOSURE STATEMENT

Members of The Florida First Coast Chapter National Business League V. City of Jacksonville Dkt No. 99-98-Civ-J-20B RE9911799E 11th Cir. R. 26.1 (see reverse) requires that a Certificate of Interested Persons and Corporate Disclosure statement be included with each brief, petition, answer, motion or response filed by any party. You may use this form to fulfill this requirement. In alphabetical order, with one name per line, please list the trial judge(s), and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case (please type or print legibly):

Coleman

Addris Vinson

Albert J. Bryant

Alvin Mitchell

Andre W. McBride

Arnett Greene

Arthur Williams

Benjamin F. Norman

Members of The Florida First Coast Chapter National Business League V. City of Jacksonville Dkt No. 99-98-Civ-J-20B RE 9911799E

Bernard G. Williams

Beverly R. Williams

Bilal Sufi

Bobby L. Mitchell

Booker T. Wright

Bryan DeBose

Kinsey

Carol Hopson

Charles B. Griffin

Charles M. Wilcox

Clarence A. Osgood

Clifford N, Norton

Daniel W. Scott, Jr.

Darryl A. Brown

Debra A. Anderson

Earnest Butler, Jr.

Members of The Florida First Coast Chapter National Business League V. City of Jacksonville Dkt No. 99-98-Civ-J-20B RE 9911799E

Edgar Abrams

Edwin Robinson

Elijah Holmes, Jr

Elliott Chatman

Emily Timmons

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Fortson L.Spratling

Franklin Sykes

Gary Felder

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George F. Carter

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Harvey E. Schlesinger U.S. District Judge

Henry A. Glover

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Members of The Florida First Coast Chapter National Business League V. City of Jacksonville Dkt No. 99-98-Civ-J-20B RE 9911799E

Herbert Brown

Ira J. Pettis

Isiah J. Williams, III

Isiah Rumlin, President, Jacksonville Chapter Branch, NAACP

Leonardo Nipper

Madison Smith

Jack James, Jr.

James Alford

James Breaker

James E. Benefield

James Felder

James Ingram

James H. Argrett, Jr.

James McBride

James B. Sampson, Pres. Baptist Minister's Confer.

Jerome Noisette

Members of The Florida First Coast Chapter National Business League V. City of Jacksonville Dkt No. 99-98-Civ-J-20B RE 9911799E

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Jimmie L. Branch

Johnny F. Farmer, Attorney at Law

John E. Steele U.S. Magistrate Judge

John H. Morgan

John Spencer

John W. Demps

Johnnie Rogers, Jr.

Johnny Benefield

Johnny L. Fisher

Joseph E. Stephens

Larry Martin

Leodis Smith

Levy M.Wilcox

Lewis N. Palmer, Jr.

Lewis Siplin, Chairman F.L.A. & A Chamber of Commerce

C5 of 8

Members of The Florida First Coast Chapter National Business League V. City of Jacksonville Dkt No. 99-98-Civ-J-20B RE 9911799E

Luzohn M. Bell

Louis Reed

Loree L. French, City of Jacksonville Lawyer

Malachi S. Beyah

Marcus C. Spencer, Jr.

Mark T. Kerrin

Marva J. Salary

Marvin C. Mitchell

Melvin L. Green

Michael Green

Mildred N. Badger

Moses B. Gilmore

Nathaniel P. Richardson

Oscar Mathis

Pasco Gray, Jr.

Ralph L. Stephens

C6 of 8

Members of The Florida First Coast Chapter National Business League V. City of Jacksonville Dkt No. 99-98-Civ-J-20B RE 9911799E

Rhonda Grant

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Robert Flornoy

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Robert Wilson

Ronald Coney

Roosevelt Paige

Rosa M. Jones Carter

Roy A. Brown, Jr.

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Tommy G. Fuller

Tyrone Swan

Wayne Norman

Wilbur Evans, Jr.

Members of The Florida First Coast Chapter National Business League V. City of Jacksonville Dkt No. 99-98-Civ-J-20B RE 9911799E

Wilburn Adams

William R. Blodie

William Roberts Jr. Esquire

William S. Surcey

Willie F. Lyons

Willie Charles Mccullough

Willie D. Williams

Willie L. Brown

Woodrow Paige